

125 FERC ¶ 61,110  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Portland Natural Gas Transmission System

Docket No. RP09-2-000

ORDER ACCEPTING AND SUSPENDING  
TARIFF SHEETS SUBJECT TO REFUND AND CONDITIONS

(Issued October 29, 2008)

1. On October 1, 2008, Portland Natural Gas Transmission System (Portland) filed revised tariff sheets<sup>1</sup> to its FERC Gas Tariff to implement an in-kind fuel tracker pursuant to section 4 of the Natural Gas Act (NGA). Portland requests that the Commission grant waiver of the Commission's notice requirements to allow the filing to be effective October 1, 2008. The filing was protested. As discussed below, the Commission will deny the waiver, and accept and suspend the tariff sheets listed in Appendix A, to be effective the earlier of March 31, 2009, or a date set by subsequent Commission order, subject to refund and conditions.

**Background**

2. Portland provides transportation service over facilities extending from the United States/Canadian border to an interconnection with Tennessee Gas Pipeline Company near Dracut, Massachusetts. The facilities from Westbrook, Maine to Dracut, Massachusetts (joint facilities) are jointly owned and operated with Maritimes & Northeast Pipeline, L.L.C. (Maritimes) pursuant to agreements originally executed on October 8, 1997. Those agreements include an Ownership Agreement, an Engineering and Construction Management Agreement, and an Operating Agreement (collectively the Definitive Agreements). On November 4, 1997, the Commission issued an order in Docket No. CP97-238-001 approving these agreements.<sup>2</sup> Subsequently, Maritimes and Portland

---

<sup>1</sup> See Appendix A.

<sup>2</sup> *Maritimes and Northeast Pipeline, L.L.C.*, 81 FERC ¶ 61,166 (1997).

proposed additional modifications to the Definitive Agreements. On December 23, 2002, the Commission issued an order accepting an uncontested settlement and approving an amendment to the Operating Agreement.<sup>3</sup> On March 12, 2007, the Commission approved a settlement in Docket No. CP07-57-000<sup>4</sup> which modified the Definitive Agreements in order to provide for a more certain procedure for future expansions of the joint facilities.

3. On February 21, 2007, the Commission issued a certificate for Maritimes to construct and operate its Phase IV Expansion project.<sup>5</sup> That project is designed to provide the additional capacity necessary to accommodate supplies of regasified LNG from the proposed Canaport LNG import terminal to be located in Saint John, New Brunswick, Canada. Maritimes' Phase IV Expansion project consists of additional compression, metering, and pipeline looping facilities that would increase the mainline capacity of the Maritimes system from 415,480 dekatherms per day (Dth/d) to 833,317 Dth/d, an increase of approximately 418,000 Dth/d.<sup>6</sup> The additional compression includes two new compressor stations on the joint facilities. However, Portland did not participate in the Phase IV Expansion project, and that project provides no additional capacity on the Portland system.

4. In the Certificate Order, the Commission found that Maritimes' additional revenues from the Phase IV Expansion project would exceed its costs.<sup>7</sup> Accordingly, the Commission granted Maritimes' request for a presumption of rolled-in rate treatment for the Phase IV Expansion facilities, unless there is a significant change in the relevant facts and circumstances. However, the Commission stated that Maritimes' addition of compression could generate increased fuel use over and above what Maritimes has historically charged shippers on its system. Therefore, the Commission ordered Maritimes to submit a fuel study to demonstrate what impact the new compression will have on system fuel, and whether changes in fuel use, combined with the decrease in base

---

<sup>3</sup> *Maritimes and Northeast Pipeline, L.L.C.*, 101 FERC ¶ 61,348 (2002).

<sup>4</sup> *Maritimes and Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,193 (2007).

<sup>5</sup> *Maritimes & Northeast Pipeline, L.L.C.*, 118 FERC ¶ 61,137 (2007) (Certificate Order), *reh'g denied*, 120 FERC ¶ 61,055 (2007).

<sup>6</sup> This increase of capacity is for the pipeline wholly-owned by Maritimes. On the facilities that are jointly owned with Portland, the proposed additional capacity is 393,000 Dth/d.

<sup>7</sup> 118 FERC ¶ 61,137 at P 31.

transportation rates, would adversely affect Maritimes' existing shippers. If so, the Commission directed Maritimes to propose an incremental fuel retention percentage for the Phase IV Expansion project. Maritimes submitted a fuel study on March 23, 2007, showing that its projected revenue from the Phase IV Expansion project will exceed the additional fuel costs that would be allocated to capacity currently subscribed by Maritimes' existing shippers over the first 10 years of the life of the project. The Commission accepted the study on July 23, 2007.

### **Details of Filing**

5. In the instant proceeding, Portland proposes to implement a new fuel charge that would apply only to forward-haul transportation paths with a delivery point on the joint facilities. Portland states that it has not previously required a fuel charge in its tariff because there are currently no compressor stations located on its system, including the joint facilities. However, Portland explains that the Phase IV Expansion project authorizes Maritimes to add compression to the joint facilities at two different points on the pipeline, Westbrook and Eliot. Portland states that, although it is not participating in the Phase IV Expansion project, the Operating Agreement obligates it to furnish in-kind gas for actual compressor fuel usage in proportion to its share of the total gas transported through the joint facilities.<sup>8</sup> Portland contends that, pursuant to the pertinent provisions of the Operating Agreement, once it is required to provide fuel to the joint facilities, it is critical that it have tariff provisions in place that permit the recovery of fuel.

6. To accomplish this, Portland proposes to add a fuel surcharge to its tariff which provides that such shippers (as defined in the tariff) will furnish fuel in-kind at the applicable fuel charge factor. Portland asserts that the fuel charge factor will be posted on its internet website on a monthly basis. Portland states that the tariff revisions also provide that reservation and usage charges will be based on the shipper's applicable monthly maximum contract demand and receipt point scheduled quantities, irrespective of the fuel charge factor.<sup>9</sup> According to Portland, shippers will receive in-kind adjustments to scheduled quantities in order to account for the fuel charge. Portland states that it has added definitions for fuel quantity (proposed section 2.13) and fuel

---

<sup>8</sup> Portland cites to Operating Agreement, section 2.14(a) and (c). According to Portland section 2.14(a) provides that "[e]ach owner shall be obligated to furnish Gas for such losses in proportion to its share of the total Gas transported through the Mainline and each other Portion on that Day" and that section 2.14(c) provides that "[t]he provisions of section 2.14(a) shall also apply to Gas used as fuel for the operation of the Joint Facilities."

<sup>9</sup> Portland cites to section 3.4(b), First Revised Sheet No. 224.

charge factor (proposed section 2.14), which it contends are necessary to implement the proposed fuel charge.

7. Portland requests waiver of the 30-day prior notice requirement in section 154.207 of the Commission's regulations.<sup>10</sup> Portland states that good cause exists for waiver of the notice requirements. First, Portland contends that, for the reasons stated above, the proposed fuel charge is necessary as a result of system modifications being undertaken by Maritimes and that these modifications are not under Portland's authority or control. Portland states that it has just recently become aware that Maritimes anticipates burning fuel during commissioning of the compressor units, prior to the in-service date of the facilities. Therefore, Portland maintains that the waiver is necessary to ensure the proposed fuel charge is in place as Maritimes' commissioning activities get underway. Portland argues that no party will be prejudiced by granting its waiver request because it alleges that the shippers on Portland's system that will be affected by this filing have been aware that Portland would be required to modify its tariff to include a fuel charge due to the Phase IV Expansion project.

#### **Notice of Filing, Intervention, and Protests**

8. Notice of Portland's filing was issued on October 3, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>11</sup> Pursuant to Rule 214,<sup>12</sup> all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On October 14, 2008, protests were filed by National Grid Gas Delivery Companies (National Grid),<sup>13</sup> PNGTS Shippers Group

---

<sup>10</sup> 18 C.F.R. § 154.207 (2008).

<sup>11</sup> 18 C.F.R. § 154.210 (2008).

<sup>12</sup> 18 C.F.R. § 385.214 (2008).

<sup>13</sup> The National Grid Gas Delivery Companies include The Brooklyn Union Gas Company, KeySpan Gas East Corporation, Boston Gas Company, Colonial Gas Company, Essex Gas Company, EnergyNorth natural Gas, Inc., Niagara Mohawk Power Corporation, and the Narragansett Electric Company.

(Shippers Group)<sup>14</sup> and DTE Energy Trading, Inc. (DTE Energy). The parties raise many issues which are set forth below.

**a. Filing Requirements**

9. In their protests, National Grid, Shippers Group and DTE Energy request that the Commission reject the proposed fuel charge. National Grid and Shippers Group state that Portland is proposing to increase customers' rates by assessing an in-kind fuel surcharge without complying with any of the Commission's rules governing rate increases as set forth in section 154 of the Commission's regulations.

10. For instance, National Grid and Shippers Group note that, for in-kind fuel reimbursement adjustment filings, section 154.403 requires: (i) a step by step description of both the calculation of the specific charge proposed and the mechanics of the adjustment mechanism; (ii) a summary of all mathematical calculations underlying each component of charges and applied under each rate schedule; (iii) a discussion of whether and how carrying charges will be computed and applied to over and underrecovery balances; and (iv) a statement of how fuel surcharges will be discounted, if at all. National Grid and Shippers Group argue that Portland's application must be summarily rejected because of it lacks required information and workpapers and a narrative explanation of and the calculation of the adjusting factor, etc.

11. National Grid observes that Portland's proposal is to assess fuel in-kind at the receipt point, which would serve to reduce customers' firm contract quantities without their consent, because their existing firm contracts do not permit suppliers to gross-up their transportation quantities for fuel.

**b. Waiver**

12. Shippers Group and DTE Energy argue that, if Portland's filing is not rejected, waiver of the 30-day notice requirement should be denied, and the filing should be suspended for five months and set for hearing. Shippers Group contends that waiver of the notice requirement would effectively permit retroactive ratemaking. Shippers Group states that Portland's statement that its shippers have been aware that a fuel charge would be required is flatly false. Shippers Group and DTE Energy assert that the Portland shippers were not only not aware of the potential for a fuel reimbursement charge to be placed into effect on October 1, 2008, but they were not aware that Portland intended to

---

<sup>14</sup> The PNGTS Shippers Group includes: Bay State Gas Company, Northern Utilities, Inc., DTE Energy Trading Inc., H.Q. Energy Services (U.S.) Inc., New Page Corporation and Wausau Papers of New Hampshire, Inc.

impose such a charge as a result of Maritimes' Phase IV Expansion project at any time. DTE Energy states that Portland shippers have relied on Commission precedent and the Certificate Order and concluded that there would be no such fuel charge. Shippers Group states that Portland's allegations are irrational and wrong and fall far short of "good cause" required for a waiver.

**c. No-Subsidization Policy**

13. Shippers Group observes that Portland's stated need for compressor fuel arises entirely from the installation of compression required by Maritimes' Phase IV Expansion, project which Portland is not participating in. Shippers Group and DTE Energy note that under clear Commission policy regarding pricing and charges associated with pipeline expansion projects, it is neither just, reasonable nor appropriate for existing shippers on a pipeline who receive no benefit from a facility expansion to incur fuel costs associated with that expansion. Shippers Group and DTE Energy assert that Portland's shippers not only receive no benefit from the Maritimes' expansion, but are negatively impacted by it, because the Phase IV Expansion project results in a decrease of capacity on Portland's system, which could result in adverse impacts for existing shippers by reducing billing determinants on Portland and thereby resulting in substantial rate increases. Shippers Group states that Portland's obligating itself to bear an expense does not establish that it is just and reasonable to pass that expense through to its shippers. Shippers Group states that in this case it is demonstrably not just and reasonable for Portland to do so.

14. Shippers Group asserts that both the Commission and the courts have interpreted the no-subsidy policy as prohibiting the assessment of expansion compression fuel costs on existing shippers who do not directly benefit from an expansion, demonstrating that such shippers would not receive service but for the expansion. Shippers Group states that Portland's proposed fuel charges would place its shippers in the position of directly subsidizing Maritimes' shippers using the Phase IV Expansion capacity.

15. DTE Energy states that in the Certificate Order on the Phase IV Expansion project, the Commission concluded that "Maritimes' proposal will not have adverse impacts on existing pipelines or their customers."<sup>15</sup> DTE Energy asserts that obviously the Certificate Order did not authorize the allocation by Maritimes of the Phase IV Expansion fuel requirements to a third-party pipeline, Portland, or the recovery of that fuel subsidy from Portland's shippers. DTE Energy notes that the Commission observed that Maritimes' application did not provide any information as to the possible impact on fuel costs or fuel retention levels to its existing shippers, and directed Maritimes to file an analysis to demonstrate what impact the new Phase IV Expansion compression would

---

<sup>15</sup> Certificate Order at P 27 (2007).

have on system fuel use, and whether the changes in fuel use combined with the projected decrease in base transportation rates accompanying a roll-in would adversely impact Maritimes' existing shippers.<sup>16</sup> DTE Energy notes that Maritimes existing shippers' net benefits from the project were estimated to be approximately \$37 million per year, stating that, even with the additional fuel costs, the Phase IV Expansion project remains financially viable without adverse rate impacts or subsidies from Maritimes' existing shippers. DTE Energy asserts that the Commission could not have meant that Portland's shippers should subsidize Maritimes Phase IV Expansion shippers.

**d. Application of the Definitive Agreements**

16. Shippers Group notes that neither the Commission's approval of the Phase IV Expansion project nor the Operating Agreement acknowledge the potential for Portland's shippers to be assessed fuel charges for a capacity expansion they receive absolutely no benefit from. Shippers Group questions Portland's reliance on the Operating Agreement to charge fuel. Shippers Group note that Section 2.14(a) of the Operating Agreement defines "proportionate share" as the share determined "utilizing the methodology described in Attachment B" to the agreement. Shippers Group and DTE Energy state that the Attachment B methodology applies only to "quantities ... that the Operator is not able to attribute to a particular Owner's respective shippers." Shippers Group and DTE Energy note that in this case, where *no* Portland shippers are participants in the Phase IV Expansion project, it can hardly be rationally argued that all compressor fuel cannot be attributed to shippers on the Maritimes' system who will be the only users of the additional capacity. DTE Energy asserts that since Portland is not a joint owner of the Phase IV Expansion facilities, its "share" of the gas transported on the Phase IV Expansion facilities is zero.

17. DTE Energy states that it is not a party to the Operating Agreement, and did not agree to provide fuel to benefit another pipeline and its customers. Therefore, DTE Energy argues that Portland's proposal to hold its customers responsible for fuel charges incurred by Maritimes for the benefit of Maritimes and its customers has no contractual basis.

**e. Other Issues**

18. Shippers Group states that Portland assesses usage charges based on receipt point scheduled quantities, and that Portland's proposal requires fuel quantities to be delivered

---

<sup>16</sup> DTE Energy states that the Additional Fuel Cost Study, filed March 23, 2007, by Maritimes made no mention of any plan to allocate a portion of Phase IV Expansion fuel to Portland.

in-kind by shippers at the point of receipt. Shippers Group questions whether usage charges will be assessed on the fuel charge. Shippers Group notes that, while no shippers on Portland's system will benefit from the Phase IV Expansion project, only forward haul shippers will be assessed the in-kind fuel charge.

### **Discussion**

19. The protests to Portland's filing have raised significant issues as to whether Portland's proposed fuel charge is just and reasonable, and the Commission does not have enough information to resolve those issues at this time. As a result, Portland's request for waiver of the 30-day notice requirement is denied. Accordingly, we accept Portland's proposed tariff sheets setting forth its proposed in-kind fuel charge, which are listed in Appendix A, for filing and suspend their effectiveness for the period set forth below, to become effective the earlier of five months or a date set by subsequent Commission order, subject to refund and further review.

20. The issues raised by Portland's filing include (1) whether the Operating Agreement requires Portland to compensate Maritimes' for fuel use on the joint facilities incurred as a result of an expansion project in which Portland did not participate, and (2) if so, whether Portland should be allowed to flow those costs through to its shippers. Therefore, in order to ensure that Portland's proposed tariff changes comply with Commission regulations and precedent and do not violate shippers' rights, the Commission will require Portland to file additional information and explanations that address these issues and all other issues raised by the protests. Portland is also directed to file a copy of the up-to-date revised Definitive Agreements. Portland must make this filing within 20 days of the date of this order. The parties may file reply comments within 40 days of the date of this order.

### **Suspension**

21. Based upon a review of the filing, we find that Portland has not shown the proposed tariff sheets listed in Appendix A to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept Portland's proposed tariff sheets for filing and suspend their effectiveness for the period set forth below, to become effective the earlier of March 31, 2009 or a date set by subsequent Commission order, subject to refund and conditions.

22. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that

it may be inconsistent with other statutory standards.<sup>17</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.<sup>18</sup> Such circumstances do not exist here. Therefore, the Commission will exercise its discretion to suspend the revised tariff sheets listed in Appendix A for five-months and will permit them to take effect the earlier of March 31, 2009, or a date set by subsequent Commission order, subject to refund and subject to the conditions set forth in the body of this order and the ordering paragraphs below.

The Commission orders:

(A) The tariff sheets listed in Appendix A to this order are accepted and suspended, to be effective the earlier of March 31, 2009, or a date set by subsequent Commission order, subject to refund and conditions.

(B) Within 20 days of the date of this order, Portland must file additional information and explanations as discussed in the body of this order.

(C) The parties may file reply comments within 40 days of the date of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>17</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>18</sup> See *Valley Gas Transmission, Inc.*, 11 FERC ¶ 61, 236 (1980), *order on reh'g*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

**Appendix A**

**Portland Natural Gas Transmission System  
FERC Gas Tariff, Second Revised Volume No. 1**

Fifth Revised Sheet No. 100  
Fifth Revised Sheet No. 102  
First Revised Sheet No. 203  
First Revised Sheet No. 208  
First Revised Sheet No. 218  
First Revised Sheet No. 224  
First Revised Sheet No. 302  
First Revised Sheet No. 303  
First Revised Sheet No. 304  
First Revised Sheet No. 305  
Second Revised Sheet No. 306  
Second Revised Sheet No. 307  
First Revised Sheet No. 325  
First Revised Sheet No. 335  
First Revised Sheet No. 366